

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ARCH SPECIALTY INSURANCE
COMPANY,

Plaintiff,

v.

DIVINO INSTALLATION CORP.,

Defendant.

Civil Action No.: 18-cv-11088

COMPLAINT AND JURY DEMAND

Plaintiff Arch Specialty Insurance Company by way of Complaint against Defendant, Divino Installation Corp., states as follows:

PARTIES

1. Plaintiff Arch Specialty Insurance Company (“Arch”) is an insurance company organized under the laws of the State of Missouri with a principal place of business at Harborside 3, 210 Hudson Street, Suite 300, Jersey City, New Jersey 07311.

2. Defendant Divino Installation Corp. (“Divino”) is a corporation organized under the laws of the State of New York with a principal place of business at 1313 Saw Mill River Road, Yonkers, New York 10710.

JURISDICTION AND VENUE

3. The amount in controversy between the parties is in excess of \$75,000.00.
4. Jurisdiction is based on diversity of citizenship under 28 U.S.C. § 1332.

COUNT ONE
(Breach of Contract)

5. Arch repeats, restates and realleges the allegations of Paragraphs 1 through 4 as if fully set forth herein.

6. Arch issued commercial general liability insurance policy no. AGL 004254400 to Divino for the effective dates of October 27, 2016 to October 27, 2017 (the “Policy”).

7. The Policy is an insurance contract which provides insurance coverage for certain liabilities of Divino, as set forth in the Policy, in exchange for premiums.

8. Arch fulfilled its contractual obligations and provided the coverage afforded by the Policy.

9. Pursuant to the terms of the Policy, the initial premiums were based on information submitted by Divino and/or its insurance agent/broker on behalf of Divino regarding Divino’s estimated exposure for the effective dates of coverage.

10. Because initial premiums are based on estimated information, the Policy is subject to audit based on the actual exposure during the effective dates of coverage. The audit can result in additional premiums due to the insurer from the insured, or return of premiums due to the insured from the insurer.

11. The audit of the Policy resulted in an additional premium of \$184,738.00 (“Additional Premium”) owed by Divino to Arch.

12. Divino failed and refused to remit payment of the \$184,738.00 owed to Arch pursuant to the terms of the Policy.

13. Arch billed and/or issued demands for payment for the outstanding amount to Divino in a timely fashion.

14. Divino is also obligated to pay a New York Surplus Lines Tax and a New York State Stamping Fee equal to 3.6% and 0.2% of the Additional Premium, respectively (“New York State Taxes and Fees”).

15. Arch, on numerous occasions prior to filing the instant litigation, demanded payment of the Additional Premium and New York State Taxes and Fees owed by Divino and attempted to collect the same without success.

16. Through its failure and refusal to remit payment of the Additional Premium and the New York State Taxes and Fees, Divino breached the contract between Divino and Arch, *i.e.* the Policy.

17. Divino has failed, refused and continues to refuse to pay the balance due and owing to Arch thereby causing Arch to suffer damages in the amount no less than \$184,738.00, plus interest, attorney’s fees and litigation costs.

WHEREFORE, Arch demands judgment against Divino in an amount no less than \$184,738.00, together with New York State Taxes and Fees, interest, attorney’s fees, costs of suit, and such further relief as this Court deems just and proper.

COUNT TWO
(Unjust Enrichment)

18. Arch repeats, restates and realleges the allegations of Paragraphs 1 through 17 as if fully set forth herein.

19. Arch has provided insurance coverage and related services to Divino for which Divino has refused to pay and has been unjustly enriched thereby.

20. Arch has repeatedly demanded that Divino remit payment of the amount due and owing to Arch.

21. Divino has failed, refused and continues to refuse to pay the balance due and owing to Arch thereby unjustly enriching Divino and causing Arch to suffer damages in an amount no less than \$184,738.00, plus interest, attorney's fees and costs.

WHEREFORE, Arch demands judgment against Divino in an amount no less than \$184,738.00, together with New York State Taxes and Fees, interest, attorney's fees, costs and expenses of suit, and such further relief as this Court deems just and proper.

COUNT THREE
(Account Stated)

22. Arch repeats, restates and realleges the allegation of Paragraphs 1 through 21 as if fully set forth herein.

23. Divino, being indebted to Arch upon an account stated between them, promised to pay Arch the amount owed on demand.

24. Arch has repeatedly demanded that Divino remit payment for the amount owed to Arch. Divino, however, has failed and refused to remit payment.

25. Divino's failure and refusal to pay the balance due and owing to Arch has caused Arch to suffer damages in an amount no less than \$184,738.00, plus interest, attorney's fees and costs.

WHEREFORE, Arch demands judgment against Divino in the amount of \$184,738.00, together with New York State Taxes and Fees, interest, attorney's fees, costs of suit, and such further relief as this Court deems just and proper.

Dated: New York, New York
November 28, 2018

ROBINSON & COLE LLP

By: s/ Elyor Pogorelskiy
J. Gregory Lahr
Cara C. Vecchione
Elyor Pogorelskiy
666 Third Avenue, 20th Floor
New York, New York 10017
Telephone: (212) 451-2900
Facsimile: (212) 451-2999
glahr@rc.com
cvecchione@rc.com
epogorelskiy@rc.com
*Attorneys for Plaintiff Arch Specialty
Insurance Company*